IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

TUESDAY, THE 10TH JULY 2007 / 19TH ASHADHA 1929

OP.No. 21151 of 2002(R)

PETITIONER:

TAJ KERALA HOTELS AND RESORTS LTD.,
REGISTERED OFFICE AT TAJ RESIDENCY, ERNAKULAM,
COCHIN, REPRESENTED BY ITS COMPANY SECRETARY,
MR.J.SURESH.

BY ADV.SRI.A.K.JAYASANKAR NAMBIAR,
ADV.SRI.ANIL D. NAIR.

RESPONDENTS:
----

1. **ASSISTANT LABOUR OFFICER,**
   DISTRICT LABOUR OFFICE, THODUPUZHA, IDUKKI DIST.

2. **THE SECRETARY, DEPARTMENT OF LABOUR,**
   SECRETARIAT, THIRUVANANTHAPURAM

3. **STATE OF KERALA, REPRESENTED BY ITS**
   CHIEF SECRETARY TO GOVERNMENT, SECRETARIAT,
   THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SMT. T.B. RAMANI.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 10/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P. NO. 36311/2002 IN O.P. NO. 21151/2002

DISMISSED

10/07/2007. **SD/- THOTTATHIL B.RADHAKRISHNAN, JUDGE.**

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE LETTER DTD. 06/02/2001 FROM THE R.1. TO THE PETITIONER.

EXT.P.2: COPY OF THE LETTER DTD. 18/03/2001, PETITIONER TO THE R.1. ISSUED BY THE R.2.

EXT.P.3: COPY OF THE LETTER DTD. 03/07/2001 ISSUED BY THE R.1.

EXT.P.4: COPY OF THE LETTER DTD. 04/08/2001 PETITIONER TO THE R.1.

EXT.P.5: COPY OF THE NOTICE NO. C (2) 2822/2000 DTD. 04/02/2002 ISSUED BY THE R.1. TO THE PETITIONER.

RESPONDENT'S EXHIBITS: NIL.

//TRUE COPY//

prv.

THOTTATHIL B. RADHAKRISHNAN, J.

= =

O.P.No.21151 of 2002-R

= =

Dated this the 10th day of July, 2007.

JUDGMENT

The petitioner faces the impugned recovery proceedings in terms of the Building and Other Construction Workers' Welfare Cess Act, 1996, hereinafter referred to as the “Cess Act”. The petitioner took the stand that the liability is that of the contractor whose identity was disclosed in Ext.P2 reply. However, Ext.P3 has been issued by stating that the agreement between the petitioner and the contractor does not contain any clause relating to the liability under the Cess Act and therefore, the contractor cannot be held responsible.

2. The Cess Act does not define the term “employer”. It borrows, by incorporation, the definition of

that term as available in the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996, the "Act", for short, whereby, the "employer" means "an owner" and includes, among other things, "a contractor" under Clause (iii) of Section 2(1)(i) of the Act. The learned counsel for the petitioner relying on the decision of the Apex Court in **N.D.P.Namboodripad v. Union of India** (2007) 4 SCC 502 states that in the context of the engagement falling for consideration, the use of the statutory device "means and includes" has to be understood to exclude the owner of the building from the purview of the term "employer" when a contractor becomes liable in terms of Clause (iii) of Section 2(1)(i) of the Act.

3. Having regard to the fact that a hierarchy of authorities is available under the statute, the questions raised have to be decided on the basis of materials and after hearing the petitioner, as also the contractor.

In the result, this writ petition is disposed of directing that the issue as to whether it is the petitioner or the contractor referred to in Ext.P2, who has to satisfy the liability under the Cess Act, will be decided by the first respondent as a preliminary issue and a decision thereon shall be rendered within a period of three months from the date of receipt of a copy of this judgment after giving an opportunity of being heard to the petitioner and the aforesaid contractor and finalization of assessment shall be only by a statutory order thereafter. The impugned proceedings, following the interim order on C.M.P.36311/2002 on 26-7-2002 will continue to govern the field until the order of assessment, if any, is made.

THOTTATHIL B. RADHAKRISHNAN,
JUDGE.

Sha/-

THOTTATHIL B. RADHAKRISHNAN, J.

= = = = = = = = = = = = = = = = = = =

O.P.No. 21151 of 2002-R

= = = = = = = = = = = = = = = = = = =

JUDGMENT

Dated: 10th July, 2007.